



# ENVIRONMENTAL QUALITY COUNCIL

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TODD EVERTS, Lead Staff

## AGENCY OVERSIGHT SUBCOMMITTEE

### MINUTES

Date: March 10, 2008

Room 102  
State Capitol Building

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

**Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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#### **COMMITTEE MEMBERS PRESENT**

SEN. JIM SHOCKLEY (Chairman)  
REP. SUE DICKENSON  
REP. CHAS VINCENT  
REP. CRAIG WITTE  
MR. BRIAN CEBULL

## **COMMITTEE MEMBERS ABSENT**

REP. NORMA BIXBY (Vice Chairman)

## **STAFF PRESENT**

TODD EVERTS, Lead Staff  
CYNTHIA A. PETERSON, Committee Secretary

## **Visitors**

Visitors' list (Attachment 1)  
Agenda (Attachment 2)

## **COMMITTEE ACTION**

- The Agency Oversight Subcommittee adopted the minutes from the previous Agency Oversight Subcommittee meeting.
- The Subcommittee recommended the EQC address the remediation at the Kalispell Pole and Treating Plant site and send a letter of encouragement to the Department of Environmental Quality and Potentially Responsible Parties who have agreed to the Work Plan, and that the EQC send a separate letter to the Burlington Northern and Santa Fe Railroad requesting them to move forward.

## **CALL TO ORDER AND ROLL CALL**

00:00:01 Sen. Jim Shockley, Chairman of the Agency Oversight Subcommittee (Subcommittee), called the meeting to order at 9:00 a.m. The secretary noted the roll (Attachment 3).

## **AGENDA**

### **OVERVIEW AND UPDATE ON THE TMDL PROCESS IN NORTHWEST MONTANA**

#### **DEQ Staff Presentation**

00:00:50 George Mathieus, Department of Environmental Quality (DEQ), gave a PowerPoint presentation entitled "Overview & Update on the TMDL Process in NW Montana" (EXHIBIT 1).

#### **Subcommittee Questions**

00:10:34 Rep. Vincent thanked Mr. Mathieus for extending the public comment period. Rep. Vincent attended the public meeting and depicted answers to some of the questions as disturbing. Rep. Vincent was concerned about the two streams that were dropped off the list and recalled questions were asked as to why those streams were dropped. Rep. Vincent recalled the response was because of the road density issue. Rep. Vincent recalled concern that the response was ironic

since the roads were decommissioned even though the test showed Total Maximum Daily Loads (TMDLs) were lower than other drainages where no road work had been conducted. Rep. Vincent further explained that the road density issue is of high concern to many people in his area since many believe the arbitrary decommissioning of roads is a large problem. Rep. Vincent stated people were very concerned that no one had walked down the roads, and decisions were made based on models. Rep. Vincent sought to know how decisions and recommendations could be made without walking into drainages.

- 00:13:53 Mr. Mathieus responded the streams dropped off were originally listed in 2006, but no TMDL was done. Mr. Mathieus suggested the scenario was common. Mr. Mathieus explained decisions are sometimes based on how much workload can be handled, and that new streams are continually added to the workload. Mr. Mathieus believed some dropped streams would be addressed later in the TMDL cycle.
- 00:15:55 Rep. Vincent sought clarification as to whether the streams listed in 2006 were subsequently dropped for resource reasons. Mr. Mathieus clarified the streams are still on the list, but were only dropped off the TMDL schedule per se. Mr. Mathieus conveyed that they had hoped to complete all but, given time and resource constraints, the decision was made to come back in subsequent years.
- 00:16:49 Rep. Vincent wondered how recommendations are made based upon modeling.
- 00:17:38 Mr. Mathieus explained the plans are often not a requirement of the TMDL and are sometimes conceptual in nature. Mr. Mathieus was uncertain whether a complete sediment source inventory was done in the Yaak drainage and stated that often times they randomly pick subsets within a drainage. Mr. Mathieus stated modeling may or may not be used to make a prediction.
- 00:19:25 Rep. Vincent also recalled public comment centering around the 319 process. Rep. Vincent was curious how much of the DEQ's information gathering is done on the backs of those working under the 319 program.
- 00:20:34 Mr. Mathieus explained, typically, the decision to unlist was made previous to the whole project and was based primarily on the DEQ data, but the statute requires the DEQ to use all available data. Once data is collected, the data has to be put into context.
- 00:21:39 Rep. Vincent wondered what some of the recommendations were for the three streams in the Act.
- 00:22:03 Mr. Mathieus responded that the initial process in 1996 determined the three streams were sediment impaired by human-caused sources, specifically, roads. Mr. Mathieus explained the need to use the proper forest processes and stated there may be instances where the best management practices are not being used. Mr. Mathieus stated most of the recommendations are fairly broad and generic.

- 00:24:30 Rep. Vincent asked whether the DEQ looks at potential stored values of sediment.
- 00:25:22 Mr. Mathieus responded that the DEQ absolutely looks at what could potentially happen in the future.
- 00:26:09 Chairman Shockley summarized that the process is basically an office process, and that the DEQ uses available information from a variety of sources and then applies the data to a model.
- 00:26:37 Mr. Mathieus explained the first step in the process consists of developing water-quality standards. Stream assessment and listings included a requirement for sufficient and credible data analysis. The DEQ uses available information from other sources and also dispatches its own crew to collect information, do an analysis, and make determinations. Mr. Mathieus believed the process is not an office exercise, but consists of a myriad of processes.
- 00:28:31 Rep. Dickenson recalled when it was decided that TMDLs needed to be developed but, because of lack of resources and determination, the state did not act quickly. Rep. Dickenson suggested the DEQ could move through the process faster using modeling, but that the DEQ has wanted more local involvement. Rep. Dickenson asked whether Montana is moving efficiently toward meeting the deadline and getting local stakeholders involved in the plan.
- 00:30:15 Mr. Mathieus responded the DEQ is moving as efficiently as it can and expanded that a model could be anything. Mr. Mathieus suggested a model is a good tool for future planning. Mr. Mathieus reminded the Subcommittee that it is important TMDLs are done in a timely manner and done correctly. Mr. Mathieus believed it is in everyone's best interest to do TMDLs right.
- 00:32:16 Rep. Dickenson wondered whether the lack of completion of TMDLs in various watersheds has been the reason for the rejection of timber sales.
- 00:32:38 Mr. Mathieus did not believe that was the reason, but acknowledged the fear exists among the wood products' industry.

#### **Public Comment**

No public comment was offered.

### **UPDATE ON THE PROGRESS OF REMEDIATION AT THE KALISPELL POLE & TIMBER, RELIANCE REFINERY, AND YALE OIL CORPORATION SITE**

#### **DEQ Staff Presentation**

- 00:33:43 Sandi Olsen, Administrator, Remediation Division, DEQ, reviewed a PowerPoint presentation entitled "KRY Status Report" (EXHIBIT 2) and a map of the KRY site (EXHIBIT 3). Ms. Olson also submitted a chart entitled "Health Risks Related to Contaminants Identified at the KRY Facility" (EXHIBIT 4).

### **Subcommittee Questions**

- 00:46:46 Mr. Cebull asked whether the DEQ has a time line or a specific date for completing a Record of Decision (ROD) on the Kalispell Pole & Timber, Reliance Refinery, and Yale Oil Corporation (KPTS) site.
- 00:47:08 Ms. Olsen responded the ROD would be completed by May and that some of the comments were very complex. In addition, the DEQ is working with all the Interested Parties to see how the final plan will be implemented.
- 00:47:36 Chairman Shockley wondered why the Burlington Northern Santa Fe Railway (BNSF) was involved in the KPTS site.
- 00:47:51 Ms. Olsen responded the BNSF goes through the KPTS site and includes a wide right-of-way. Ms. Olsen stated there were some petroleum releases and spills that occurred within the right-of-way, as well as contamination associated with wood treating.
- 00:48:29 Moriah Bucy, KTP Site Manager, clarified the BNSF has owned KTP property since the beginning of KTP's operation.

### **Public Comment**

- 00:49:29 Kelly Danielson, City of Kalispell, provided comments on how the City of Kalispell is attempting to facilitate an efficient, quick, and cost-effective remediation. Ms. Danielson indicated there are current businesses in Kalispell who are willing to relocate to make the property more useful. Ms. Danielson believed the DEQ has been working to achieve a proposed plan and solution. Ms. Danielson offered assistance from the City of Kalispell.

### **Subcommittee Questions**

- 00:51:16 Rep. Witte asked whether the City Manager was available and Ms. Danielson indicated the City Manager was unavailable; however, Joe Underwriter, Kalispell Chamber of Commerce, was available. Rep. Witte depicted the KPTS as "disturbed soil." Rep. Witte explained there are 114 monitoring wells on the site, but no dirt is being moved. Rep. Witte requested Mr. Underwriter to explain potential future development for the KPTS site.
- 00:52:57 Mr. Underwriter identified an agricultural operation and a construction supply company.
- 00:53:43 Rep. Witte recalled concerns voiced about the railroads moving out of downtown.
- 00:54:08 Mr. Underwriter identified an opportunity to revitalize downtown Kalispell with the track removal. Mr. Underwriter believed that goal would offer more future opportunities than retaining the spur in the downtown area. Ms. Olson agreed with Mr. Underwriter since the spur only serves the two identified businesses.

- 00:55:05 Rep. Witte explained the location of the KPTS site and stated there are two businesses served by the rail line and, if those businesses could move to the east side, it would eliminate the railroad crossings in Kalispell. Rep. Witte was concerned about the lack of action at the KPTS site.
- 00:56:26 Chairman Shockley summarized the bottom line as the City of Kalispell is requesting the DEQ to remediate, so the property can be utilized. Ms. Danielsen agreed.
- 00:56:55 Richard Opper, Director, DEQ, explained that the DEQ has spent a substantial amount of time talking about the re-development plans with the City of Kalispell and that the DEQ is very supportive. Director Opper explained that the DEQ is attempting to get the clean up done but, in the end, the DEQ will not be the hold up for the redevelopment. Director Opper explained that the DEQ will not reopen negotiations on the Work Plan for the KPTS site.
- 00:58:57 Chairman Shockley asked when the DEQ would be turning dirt.
- 00:59:02 Director Opper identified current litigation with the BNSF as taking up staff resources. Director Opper explained that the BNSF has not settled regarding liability. Director Opper expanded that the DEQ is planning to turn dirt this spring.
- 00:59:50 Chairman Shockley identified the problem as being that people involved can make a procedural nightmare worse.
- 01:00:40 Rep. Dickenson asked Director Opper about his reference to Livingston and asked if the only option in Kalispell is for the state to clean up the site and send the BNSF the bill.
- 01:01:18 Director Opper responded that the DEQ and the Governor have made a decision that it will not endlessly negotiate. Currently, the DEQ has a greatly improved working relationship with the BNSF on the Livingston site, and that the DEQ had hoped that success would transfer to other sites. Director Opper admitted the process is working better.
- 01:03:49 Chairman Shockley suggested the procedure that worked in Livingston may also work at the KPTS site.

## **OVERVIEW OF AIR QUALITY REGULATIONS AND WOOD BURNING FOR HOME HEATING PURPOSES IN THE BITTERROOT VALLEY**

### **DEQ Staff Presentation**

- 01:04:49 Bob Habeck, Air Quality Policy & and Planning, DEQ, addressed air quality in the Bitterroot Valley. Mr. Habeck enforces state and federal air-quality standards. Mr. Habeck explained the history of air-quality monitoring in the Bitterroot Valley. The U.S. Environmental Protection Agency (EPA) continually adopts smaller and shorter concentration standards. Mr. Habeck explained the use of a three-year average to determine whether a community is in compliance with federal

standards. The DEQ has a desire to have local air pollution control programs in Ravalli County and Gallatin County. Mr. Habeck suggested having a local pollution control program may include voluntary participation and may not be regulatory. Mr. Habeck stated there are no air-quality regulations attributable to Ravalli County. Mr. Habeck cited the success of a wood stove change out program, and stated that program will be giving away 73 wood stoves to low-income individuals in Ravalli County. Ms. Habeck reported in December 2007 Governor Schweitzer recommended Ravalli County, Missoula County, and Lincoln County be placed on the list for non-attainment. Therefore, those counties must begin showing attainment by 2010.

### **Subcommittee Questions**

- 01:13:24 Rep. Vincent asked Mr. Habeck to expand on non-attainment.
- 01:13:43 Mr. Habeck explained non-attainment is EPA's formal designation of non-compliance to federal standards and that the designation sets a three-year time limit to show improvement. Mr. Habeck stated the daily standard in Libby is now being threatened. Mr. Habeck stated he is an advocate for a community being able to spend its air-quality capital however it sees fit.
- 01:15:11 Rep. Vincent suggested there are many more people inside the valley that would be eligible for another grant program and wondered whether there would be a mandate for people to change out their wood stoves.
- 01:16:00 Mr. Habeck replied there could be a variety of ideas, including voluntary and mandated options. Mr. Habeck stated they support local economies and public health.

### **Public Comment**

There was no public comment offered.

### **Questions from the Subcommittee**

- 01:16:58 Chairman Shockley stated his wood stove is his primary source of heat, and that he is attempting to replace his stove. Chairman Shockley did not believe the regulations make any sense. Chairman Shockley explained the Bitterroot Valley failed the test six times between 2001 and 2006.
- 01:17:47 Mr. Habeck believed the Bitterroot Valley failed the test nine times. Mr. Habeck explained how monitoring only occurs one out of three days. Mr. Habeck clarified the monitoring does not include the fire season. Chairman Shockley calculated the monitoring results and Mr. Habeck explained how the amount of exposure to pollution negatively affects public health. Mr. Habeck explained that Montana used to have respite in the summer, but that respite is now diminished due to wildfire smoke. Mr. Habeck stated people are being negatively affected by air quality both in the summer and winter.

- 01:20:26 Chairman Shockley asked Mr. Habeck if the DEQ tested in the one place in the Bitterroot Valley where it was determined the standard would most likely be exceeded. Mr. Habeck agreed. Chairman Shockley asked why three or four places in the valley were not tested and averaged.
- 01:21:02 Mr. Habeck explained smoke derived down from the pass is very fluid, and the it maximum concentration site is standard. Mr. Habeck pointed out if compliance is reached in the maximum concentration site, then everyone, everywhere, is protected. Mr. Habeck also noted there is a resource issue with testing equipment. Mr. Habeck pointed out the science utilized in measuring uniform particulate matter.
- 01:22:22 Chairman Shockley asked why not make the City of Hamilton the control area. Mr. Habeck stated that although the non-attainment boundary is set to the boundary, and the DEQ recommended that all of Ravalli County be the non-attainment boundary, the power of a local program can set the sub-boundaries for regulation and do localized specific control. Chairman Shockley did not believe the testing locations made any sense.
- 01:23:23 Mr. Habeck stated there was a monitor in Stevensville, but Mr. Habeck did not have the data readily available.
- 01:23:45 Chairman Shockley suggested the wood would need to be burned sometime, and that it would be better to burn it in the winter when it could be used for heat.
- 01:24:33 Mr. Habeck stated his regulatory power does not include greenhouse gases. Mr. Habeck does not have authority over wildfire wood smoke. Chairman Shockley stated houses will need to be heated either with wood or a fossil fuel. Chairman Shockley suggested the DEQ consider investing in more monitoring devices and limiting the problem areas. Chairman Shockley believed it is going to cost more to regulate than it is to buy a few machines to determine exactly what should be regulated.
- 01:27:45 Mr. Habeck commented the goal is to burn smart and burn efficiently. Mr. Habeck read a policy excerpt that stated: "We will work with local communities to develop responsible ordinances that allow the use of EPA-certified wood pellet burning equipment instead of broad burn bans that apply to all wood-burning equipment." Mr. Habeck stated he does not look at the type of fuel, only the emissions.
- 01:29:13 BREAK

### **Public Comment**

There was no public comment offered.



## **UPDATE ON BOARD OF ENVIRONMENTAL REVIEW ACTIVITIES**

### **Board of Environmental Review Member(s) and Staff**

01:41:47 Joe Russell, Health Officer for the Flathead City/County Health Department and Chairman of the Board of Environmental Review (BER), provided an update on BER activities. Mr. Russell explained that the Flathead City/County Health Department is rewriting its local air pollution control program. Mr. Russell believed the 1995 regulations in Whitefish did not go far enough. Mr. Russell mentioned in 2003, the BER adopted numeric standards for coal bed natural gas for the Tongue and Powder Rivers and added non-degradation standards in 2006. Mr. Russell explained the BER was asked to address re-injection with a BER rule. The BER determined the re-injection issue was outside the scope of its rulemaking and believed the issue should be addressed by the Legislature. Mr. Russell also identified rules on metal mines as being outside the scope of the BER. The BER was also asked to draft rules regarding mercury and ultimately wrote the rules and adopted standards. Mr. Russell stated the BER was very busy in 2006; and that 2007 was a catch-up year for the BER. Mr. Russell stated the BER is anxious to see how carbon and carbon dioxide rules move forward in Montana. Mr. Russell thought the Legislature should set the table on how the BER moves forward with carbon rules.

### **Public Comment**

There was no public comment.

### **Subcommittee Questions**

01:48:13 Rep. Dickenson asked who requests the rules and asked Mr. Russell to explain the process.

01:48:46 Mr. Russell identified the need to clean up rulemaking because of changes in federal regulations. Additionally, citizen petitions before the BER draw a lot of attention.

01:49:24 Rep. Dickenson noticed the makeup of the BER has to meet certain guidelines, and asked Mr. Russell to identify the purpose of the BER.

01:49:58 Mr. Russell provided a history of the BER and explained the BER's main objectives as writing rules and hearing contested cases.

01:52:19 Mr. Cebull asked whether the BER had reviewed the recommendations regarding carbon and considered which recommendations would lend themselves more to the rulemaking process rather than the legislative process.

01:52:46 Mr. Russell responded, collectively, the BER has not reviewed the recommendations and noted the BER takes a lot of time and is very deliberate in its rule-writing process.

01:54:05 Rep. Witte asked about the BER becoming more involved with CO<sub>2</sub> emissions, and asked what last year's CO<sub>2</sub> emissions were.

01:54:33 Mr. Russell did not have the exact numbers available, but commented when looking at Montana's small emissions compared to others, the issue needs to be addressed collectively, so Montana needs to do its part and participate in the solution.

01:55:56 Rep. Witte agreed and emphasized the importance of being a good steward to the land. Rep. Witte was anticipating future discussion regarding taking CO<sub>2</sub> levels back to 1990 standards and was curious what those standards were.

01:56:58 Richard Oppen, Director, DEQ, provided background on Montana's CO<sub>2</sub> emissions. Montana emits approximately six-tenths of one percent of the country's emissions. Montana's green house emissions have increased approximately 15 percent since 1990.

01:58:56 Rep. Witte asked to see a pictorial graph and explained the impact wildland fire smoke has had in the Kalispell area. Rep. Witte anticipated yearly swings in the data.

01:59:54 Director Oppen replied the data is not available on a year-by-year basis, and that the DEQ looks at various areas of industry. Director Oppen recognized Rep. Dickenson for her work on the Climate Change Action Plan. Director Oppen stated the DEQ has a substantial amount of data and documented statistics.

02:01:28 Chairman Shockley asked whether forest fires are factored into the net release of CO<sub>2</sub> calculations. Director Oppen agreed forest fires are considered.

02:01:54 Mr. Cebull stated he was not on the Climate Change Advisory Committee (CCAC) but appreciated Rep. Dickenson's expertise in the area.

02:02:18 Chairman Shockley appreciated the concurrence of the BER with the Environmental Quality Council (EQC) that the prioritization of the way to dispose of coal bed methane water should be left to the Legislature. Chairman Shockley asked if it is true that the mercury released when coal is burned does not impact the area around the plant; rather, the mercury ends up in the food chain by virtue of the oceans.

02:03:24 Mr. Russell responded the BER heard substantial testimony and scientific evidence indicating there could be some local impacts. Mr. Russell explained his own research that indicated there is a significant difference between consumption limits in Washington and consumption limits in Alaska.

02:04:52 Chairman Shockley wondered who is on the Flathead Board of Health. Mr. Russell responded the Board is primarily made up of doctors, local businessmen, a council person, and a county commissioner.

02:05:46 Rep. Vincent asked Mr. Russell to identify the largest contributor of mercury in Montana. Specifically, Rep. Vincent wondered if there is more natural mercury omitted than what industry contributes. Mr. Russell could not respond.

## **FUTURE OF CO<sub>2</sub> REGULATION**

### **DEQ Staff and Board of Oil and Gas Staff**

02:06:54 Tom Richmond, Montana Board of Oil and Gas (MBOG), participated by telephone and commented that Montana has been a member of the Interstate Oil and Gas Compact Commission (IOGCC), which has developed model statutes to address conservation issues since the 1950s. The IOGCC recently developed a model statute to address the regulatory framework for carbon capture and storage. Mr. Richmond stated Montana has no obligation to adopt any portion of the model statutes. Mr. Richmond identified one complicating issue as the involvement of the federal government. Montana has had primacy over all Class 2 oil and gas wells since 1996, while Wyoming has primacy over all classes of wells. Mr. Richmond directed the Subcommittee members to various PowerPoint presentations and suggested Ms. Nowakowski could assist the Subcommittee members with accessing the information.

02:12:15 Mr. Everts mentioned that Ms. Nowakowski would be providing an update on the Energy and Telecommunications Interim Committee at the EQC meeting on March 11, 2008.

### **Subcommittee Questions**

02:12:51 Mr. Cebull addressed the notion of the EPA having primacy over everything but Class 2 water injection and asked if that is something Montana needs to change. Mr. Cebull wanted to know what the procedure would be for getting primacy over injection into the different classes of water.

02:13:22 Mr. Richmond explained the process of primacy delegation requires the state to apply for primacy. Mr. Richmond identified one problem with the other classes of wells as being the program is not well funded by the EPA. Mr. Richmond cautioned there are a lot of strings attached to primacy, but that primacy is the difference between how the Wyoming program is run and how the Montana program could run.

02:16:18 Mr. Cebull asked whether there is any agreement among the agencies as to whether primacy should be administered by the MBOG or the DEQ. Mr. Richmond knew of only informal discussions among staff, and that there has been no discussion about who might want the administration.

02:17:18 Director Oppen agreed no formal conversations had taken place and added they are watching what happens in other states.

02:17:58 Rep. Dickenson requested clarification about what UIC stands for. Mr. Richmond clarified UIC is the acronym for the Underground Injection Control Program.

- 02:18:19 Chairman Shockley summarized the issue as whether the MBOG or the DEQ would be responsible for overseeing the reinjection of carbon into the ground.
- 02:18:47 Director Oppen agreed that is the question and expanded there are many questions that have to be addressed. Mr. Richmond agreed with Director Oppen's statement.
- 02:19:15 Chairman Shockley asked for confirmation that the CO<sub>2</sub> is liquified and may come from a coal-fired electrical plant. Director Oppen agreed.

### **Public Comment**

There was no public comment offered.

- 02:20:01 Chairman Shockley thanked Mr. Russell for his presentation.
- 02:20:18 Rep. Dickenson appreciated the work of the BER and suggested the BER brings the public into the process in a way that is very important.

### **STAFF REPORTS - Mr. Everts**

- 02:21:22 Rep. Vincent moved the adoption of the minutes from the previous Subcommittee meeting. The motion carried unanimously by voice vote.
- 02:21:53 Mr. Everts provided and reviewed an "Agency Rulemaking Update for the DEQ, the DNRC, and the Department of Fish, Wildlife and Parks" (EXHIBIT 5). Mr. Everts noted a statutorily required report on land banking would be presented to the EQC in July.

### **PUBLIC COMMENT on any matter not contained in this agenda and that is within the jurisdiction of the EQC Agency Oversight Subcommittee**

- 02:25:02 Vivian Drake, a Helena resident and owner of Drake Engineering, submitted written testimony regarding proposed DNRC rule changes regarding controlled ground water areas and proposed fee increases (EXHIBIT 6).
- 02:32:35 Chairman Shockley asked Ms. Drake whether it would be convenient for her to attend the next Subcommittee meeting, so the DNRC has a chance to respond. Ms. Drake agreed.
- 02:33:12 Rep. Witte commented some of the rules are extreme and are difficult for the public.
- 02:34:06 Ms. Drake agreed.
- 02:34:19 Rep. Witte requested the issue to be placed on the EQC's agenda for May. Rep. Witte stated he is hearing from people in the Kalispell area that the rules are very difficult and costly for the users.

02:34:58 Chairman Shockley agreed the fee increases and changes in work responsibilities will be on the agenda in May.

#### **INSTRUCTIONS TO STAFF/NEXT SUBCOMMITTEE MEETING**

02:35:45 Chairman Shockley instructed Mr. Everts to invite the DNRC to come before the Subcommittee and address the issue of fees and changes in work responsibilities in May.

02:36:18 Rep. Vincent wanted to know how many controlled ground water areas there are in Montana and asked Mr. Everts to provide a map.

02:36:59 Chairman Shockley and Rep. Witte recalled there are three controlled ground water areas.

02:37:37 Director Oppen stated the controlled ground water areas have institutional controls, so that the area of contamination is not increased.

02:39:09 Chairman Shockley asked whether the DEQ had investigated utilizing deed restrictions in controlled ground water areas. Chairman Shockley suggested deed restrictions could be discussed at the next meeting. Director Oppen stated he would speak with Mr. North about utilizing deed restrictions as a means of institutional control.

02:41:36 Mr. Everts summarized the controlled ground water areas and agreed to provide more detailed information at the next meeting.

#### **Continued Discussion on the Progress of Remediation at the Kalispell Pole & Timber, Reliance Refinery, and Yale Oil Corporation Site**

02:42:19 Rep. Dickenson suggested the Subcommittee should present the full EQC with a letter from the EQC to the BNSF urging the BNSF to move forward, reach an agreement with the DEQ, and not delay any further. Rep. Dickenson recalled past delays with the BNSF in Livingston and believed it was the responsibility of the Subcommittee to propose the idea to the EQC.

02:43:55 Director Oppen agreed a letter to the BNSF from the EQC would be helpful and stated the DEQ is eager to move forward.

02:44:52 Chairman Shockley agreed it would be a good idea.

02:45:23 Mr. Cebull thought the letter should go to the BNSF and a similar letter should be sent to the DEQ. Mr. Cebull cautioned that the letter should be written carefully. Mr. Cebull noted the Subcommittee had not heard from a representative of the BNSF.

02:47:03 Rep. Witte suggested the Kalispell City Manager and a Kalispell Chamber representative should also be players.

- 02:47:37 Rep. Dickenson moved the Subcommittee compose letters to be presented to the full EQC. One letter will be to the DEQ commending them for the work they have done and encouraging them to move as quickly as possible to get to cleanup and restoration of the site in Kalispell. The second letter will be to the BNSF asking them to expedite their negotiations with the DEQ, so cleanup can begin as soon as possible.
- 02:48:33 Rep. Witte noted 28 percent of the site is owned by the DNRC.
- 02:48:52 Mr. Everts suggested writing an efficient letter to all the Potentially Responsible Parties (PRPs) to expedite the clean up and include the DEQ in the single letter and expressing the good work they have done.
- 02:49:41 Rep. Witte agreed all the PRPs should get the letter. Rep. Dickenson suggested a letter to all the PRPs is warranted, and those PRPs who have reached an agreement should be thanked. However, Rep. Dickenson would like to see a less generic letter sent to the BNSF since BNSF has not agreed to the Work Plan. Rep. Dickenson believed the BNSF letter should be stronger.
- 02:50:37 Chairman Shockley suggested asking the EQC to draft the letters rather than presenting the EQC with letters written by the Subcommittee.
- 02:51:46 Rep. Dickenson withdrew her motion and moved the Subcommittee recommend the EQC have staff draft a letter of appreciation to the DEQ and those PRPs who have agreed to the Work Plan and to draft a separate letter to the BNSF requesting them to move forward. Rep. Dickenson agreed to Chairman Shockley's suggestion of sending a letter of "encouragement" to the DEQ rather than a letter of "appreciation."
- 02:53:03 Rep. Dickenson's motion carried unanimously by voice vote.
- 02:53:22 Mr. Everts stated enforcement and compliance reports from the DEQ, the DNRC, and the Department of Agriculture would be presented at the next Subcommittee meeting.

#### **ADJOURN**

- 02:54:27 Chairman Shockley adjourned the meeting.